LONG-TERM CARE – BUYER BEWARE

Consumers Lack Long-Term Care Insurance Protections

A Report of the
Senate Committee on Post Audit and Oversight
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Massachusetts Senate
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TABLE OF CONTENTS

EXECUTIVE SUMMARY

Massachusetts is one of only four states in the country that has failed to pass a law mandating minimum standards for long-term care insurance policies. As a consequence, Massachusetts consumers who purchase long-term care insurance policies are not adequately protected.

In the absence of a law, the Division of Insurance (DOI) has been left to oversee long-term care insurance policies through regulations. Long-term care insurance policies may be sold as individual or group policies. DOI regulates individual policies sold in the Commonwealth. In January 2000, DOI relaxed the state's long-term care insurance regulations for individual policies. During this revision process, DOI missed an opportunity to strengthen consumer protections while ensuring a better quality product.

Group long-term care insurance policies are not required to meet minimum standards in Massachusetts, and insurers are not required to submit any paperwork to regulators regarding these policies. DOI does not even know what companies are selling group policies in the Commonwealth. The most current data show that these largely unregulated group policies account for more than half of all policies sold in the state.

Long-term care insurance policies provide critical coverage for policyholders such as medical resources, personal care and support services when some physical or mental capacity for self-care is lost due to a chronic illness or condition. The demand for long-term care services – whether in someone's home, an assisted living facility or a nursing home – will inevitably increase as the number of older people in Massachusetts grows.

Experiences in Massachusetts and other states have demonstrated that consumers can suffer greatly from poorly regulated long-term care products. For example:

- premiums can increase dramatically, leading many consumers to let their policies lapse;
- claims can be denied, leaving policyholders with no ability to officially appeal their insurance companies' decisions to a third party; and
- policies can lack important home care features, leaving policyholders without the ability to access the kinds of services they are most likely to need.

Pricing People Out of Policies

Many individuals purchase long-term care insurance policies with "level premiums," leading individuals to believe that their premiums will not increase over the course of their policy. However, so-called "level premiums" can, in fact, be increased as long as the increase is applied to a class or category of policyholders rather than just one policyholder.

Ninety-four-year-old Harold Hanson from North Dakota bought his "level premium" policy in 1987 for $1,094 a year. He later had his premium hiked to $3,603 per year by his insurer, Accelleration Life. He had to drop his policy because he could no longer afford the premium. Harold paid out thousands of dollars but ultimately ended up with no coverage.

Eighty-three-year-old North Dakotan Nellie McIlroy's "level premium", originally $830 per year in 1987, shot up to $6,638 per year in 1999.

Massachusetts policyholders are at risk because the Commonwealth lacks some valuable consumer protections that other states apply to long-term care insurance policies. For example, consumers are unable to access important information that allows them to compare companies' histories for providing quality long-term care coverage. In addition, there is no third-party appeal process for consumers who have problems with their long-term care insurance policies, and group policies sold in Massachusetts are not required to meet minimum standards.

Individuals who purchase long-term care insurance are acting responsibly by preparing for their future long-term care needs and avoiding dependency on the state Medicaid program, MassHealth. In 1996, the average annual premium costs for individual and group policies sold in the Commonwealth were $1,784 and $807, respectively. People who purchase these long-term care insurance policies should be guaranteed that the products they buy meet important minimum standards. The Commonwealth must play a more proactive role in ensuring that consumers are protected.

The Market for Long-term Care Services

Long-term care will become more of a priority for the United States and Massachusetts as the elder population continues to grow. People age 85 and older, those most likely to need long-term care, constitute the fastest growing portion of the population in the United States and are expected to increase from 4 million in 2000 to 19 million by 2050. Massachusetts has a larger proportion of

older residents than the nation as a whole, with the fastest growing segment of our state's population being made up of people over the age of 85. Currently, there are more than 850,000 individuals over the age of 65 in Massachusetts, representing 13 percent of the population. Within 25 years, this population is expected to grow to more than 1.25 million people in Massachusetts.

Paying for long-term care is largely a middle-class problem. Some individuals are wealthy enough to pay for long-term care costs out-of-pocket. Our country's poorest seniors now rely on Medicaid, the government healthcare safety net for low-income Americans, to pay for long-term care costs. However, most Massachusetts residents cannot afford to pay for years of long-term care out-of-pocket or do not qualify for Medicaid coverage. Middle-class individuals often are unable to cover their expensive long-term care costs. These individuals may be unaware that their current healthcare policies, Medicare (the government's health insurance program for elders) or supplemental Medicare policies that individuals purchase on their own will not cover long-term care costs.

When faced with the dilemma of paying for long-term care needs, too often elderly, middle-income individuals are unable to afford or did not properly plan for these costs. They are then left with no other option than to "spend down" their assets to become eligible for Medicaid. When residents make this choice, limited government resources are further stretched.

The National Association of Insurance Commissioners, a non-profit organization of insurance regulators, issued and continues to revise model long-term care insurance acts and regulations. These models serve as a good foundation from which to base legislation and regulations, yet Massachusetts has no law and only partially embraces the model regulations. Consequently, Massachusetts consumers of long-term care insurance policies are put at risk.

Findings and Recommendations

Finding: Massachusetts is one of only four states that has failed to pass legislation aimed at protecting consumers who purchase long-term care insurance policies. In addition, state regulations have been relaxed. Because there is no legislation and lax regulations, Massachusetts consumers purchasing long-term care insurance policies are left without sufficient protection particularly in the following areas:

a. Massachusetts does not have any legislation or regulation imposing minimum standards on group long-term care insurance policies. In addition, DOI does not have the statutory authority to review and approve initial premium rates and rate increases by insurers offering group policies in the Commonwealth. In a 1996 DOI survey, more than half of all policies sold in Massachusetts were group policies.

b. Insurers are now selling long-term care policies to some consumers in Massachusetts that are "nursing home only" policies, even though most policyholders will never need extended nursing home care. These policies do not provide any coverage for in-home long-term care needs – care most seniors are far more likely to need.

c. Typically, consumers are forced to make permanent decisions on the features of their policy at the time of purchase. Insurers are not required to send a yearly statement reminding policyholders what coverage they have nor are they required to let them reassess their coverage options each year.

d. Policyholders lack an appropriate forum for acknowledging and officially appealing claims denials or other problems with their policies. DOI and the Attorney General's office both have a system in place to address and mediate complaints by consumers regarding their long-term care insurance policies. However, these systems fall short of providing an independent, third-party appeal process for individuals wishing to challenge a denied claim or benefit by their long-term care insurance provider.

Recommendation: Massachusetts should pass legislation creating strong standards to protect consumers in the long-term care insurance marketplace. These standards should include the following:

a. *Group policy minimum standards and disclosure*: Group policies should be required by law to meet minimum standards. DOI should have statutory authority to mandate additional standards, review initial premium rates and approve proposed premium increases for group policies sold in the Commonwealth.

b. *Multiple care settings*: Individuals should have a choice of receiving care at home or in a nursing home. All policies sold in the Commonwealth that cover nursing home care should have a home care benefit.

c. *Annual review of policy*: Policyholders should receive a yearly statement clearly outlining their coverage. Policyholders should be allowed to revisit their policies on an annual basis to make certain changes. At a minimum, the consumer should be able to:
   - change their elimination period (i.e., their "deductible");
   - modify the amount of coverage;
   - add or remove nonforfeiture coverage (a benefit that requires insurers to provide some coverage for policyholders

who paid premiums for a set number of years and then let their policies lapse); and

- add or remove inflation protection coverage.

d. *Third-party appeal process*: Policyholders should have access to an independent third-party appeal process as a way to address problems with their long-term care insurers. This process should ensure that policyholders' complaints are reviewed and addressed in a timely and fair manner, and it should allow for the overturning of unfair decisions by insurers.

Finding: Consumers can be subjected to deceptive marketing strategies when trying to purchase long-term care insurance.

a. The term "level premium" is misleading to consumers who purchase long-term care insurance policies. While information about possible rate increases is disclosed on the policy, it is not required to be disclosed in such a way that consumers are likely to understand it. As a result, individuals are often told that their policies will have "level premiums" that will not increase due to age or illness, leaving many with the impression that their premiums will never increase. However, insurance companies can and do raise premiums.

b. There are times when insurance companies make actuarial mistakes and are forced to increase premiums in order to cover claims. However, there is no regulation limiting how much the premium can be increased.

c. Consumers may receive little or inappropriate guidance in determining whether a policy is appropriate for them. DOI currently offers consumers a policy illustration, a form that outlines the coverage of a policy. This form falls short of helping consumers determine whether their income and assets make them suitable purchasers for a particular policy.

Recommendation: Massachusetts should develop protections against deceptive marketing practices in the long-term care insurance industry by instituting the following:

a. *Disclosure of possible rate increases*: All policies sold in the Commonwealth should clearly state in large, bold letters at the top of the front page of the policy in a clear, non-technical manner that rates can increase regardless of whether the insurer or agent guarantees a "level premium."

b. *Establishing guidelines for appropriate premium increases*: Insurers and consumers should have the same expectation regarding how much premiums may increase. DOI should establish a premium cap that prevents rates from increasing more than a designated percentage over the life of a policy. By establishing a premium cap, insurers have the flexibility to increase premiums up to a certain limit and consumers understand at the time of purchase the maximum amount their premium could increase.

c. *Suitability standards:* Suitability standards are guidelines issued by an insurer that help consumers determine whether a long-term care insurance policy is appropriate for them. Insurers should develop suitability guidelines for all policies sold in the Commonwealth based on a format approved by DOI.

Finding: Consumers are unable to access important information about long-term care insurers and the policies they sell. This makes comparison-shopping very difficult and forces consumers to make uneducated and uninformed choices about which company to use and which policy to buy. In addition, DOI has virtually no information about group policies sold in Massachusetts.

Recommendation: Consumers interested in purchasing long-term care insurance policies must be provided with full information on insurers and their policies in order to make informed decisions. All long-term care insurance providers should submit to DOI on a yearly basis comparative national and state-level information about policies sold in Massachusetts. This information should include at least the following:

- a brief description of policies;
- premium rate increases;
- lapse rates of policies,
- claims denial rates;
- amount paid in claims as a percentage of total premium dollars collected; and
- sample premiums for each policy at ages 50, 65 and 75.

This information should be collected on all insurers that sell long-term care insurance in Massachusetts. Companies should provide five years worth of national and state-level data, or data since inception, for every long-term care insurance policy sold in Massachusetts. This information should clearly differentiate individual policies from group policies and be written in common language with a standard format that a novice insurance purchaser could understand.

The data should be included as an insert in DOI's *Your Options for Financing Long-Term Care: A Massachusetts Guide* that is currently provided to every

consumer by insurance agents at their first meeting and should be made available on the DOI web page. In addition, the suitability standards developed by insurance companies should be on the DOI web page and provided to all consumers prior to purchasing a long-term care insurance policy. By making this information available to consumers, the market will be allowed to work as it should – consumers can pick a policy with the company they believe has the best record of service and meets their needs.

BACKGROUND

Long-term care refers to the medical resources, personal care and support services needed by people when they lose their physical and mental capacity for self-care because of a chronic illness or condition.[1] The demand for long-term care services – whether in someone's home, an assisted living facility or a nursing home – will increase significantly as the number of older people in Massachusetts grows.[2]

People age 85 and older constitute the fastest growing portion of the population in the United States and are expected to increase from 4 million in the year 2000 to 19 million by 2050.[3] People over the age of 85 are also the fastest growing segment of our state's population.[4] This group is most likely to need costly long-term care. Massachusetts has a larger proportion of older residents than the nation as a whole. Currently, 13.9 percent of the population, more than 850,000 individuals, is over the age of 65 in Massachusetts.[5] By 2025, this population is expected to grow to roughly 18.1 percent of the state's population, which will be more than 1.25 million people.[6]

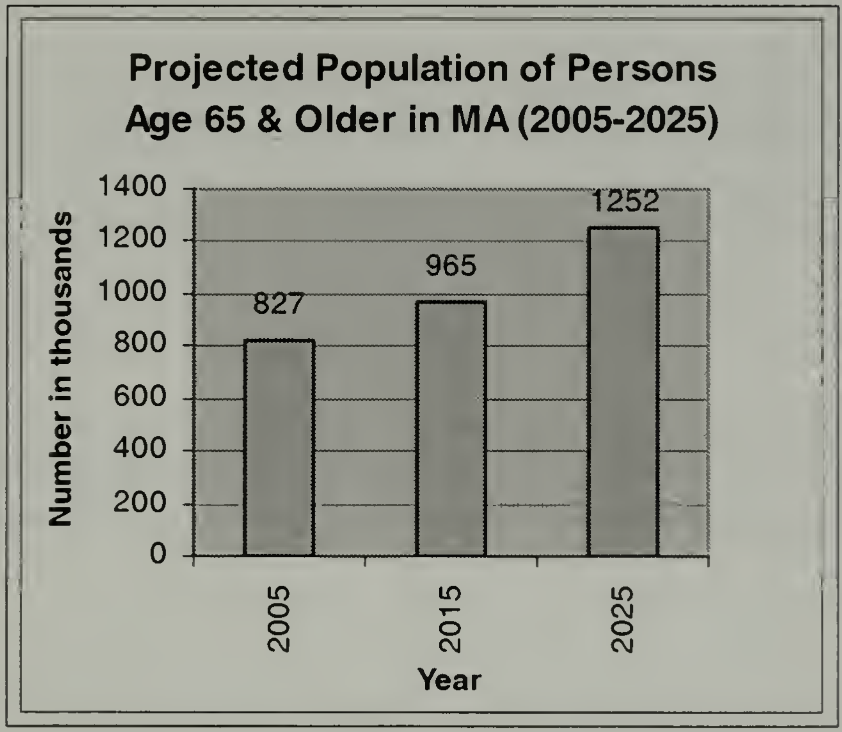

Figure 1. Source: www.census.gov/population/projections/state/stpjage.txt

[1] Commonwealth of Massachusetts. The Honorable Jane M. Swift. Executive Order #421: Report on Long-Term Care. Boston, MA: Aug. 2001.
[2] Bruce, Ellen. "Background Paper on Long-Term Care In Massachusetts." Gerontology Institute, University of Massachusetts Boston. Apr. 2000.
[3] See <http://www.agingstats.gov/chartbook2000/population.html> (Visited 1 Apr. 2002).
[4] Commonwealth of Massachusetts. The Honorable Jane M. Swift. Executive Order #421: Report on Long-Term Care. Boston, MA: Aug. 2001.
[5] Ibid.
[6] Ibid.; Bruce, Ellen. "Background Paper on Long-Term Care In Massachusetts." Gerontology Institute, University of Massachusetts Boston. Apr. 2000; see <http://www.census.gov/population/projections/state/stpjage.txt> (Visited 29 Mar. 2002).

While only one in three seniors ages 65 and over will require nursing home admission of three months or longer, many more will need some care at home or in other assisted settings.[7] For nursing home patients, the stay for those with long-term debilitating diseases like Parkinson's and Alzheimer's can be very long, while the stay for others can be as short as 90 days.[8] The average length of stay (from admission to exit interview) is 870 days (approximately 2.4 years).[9] According to experts, most seniors prefer to remain in their homes or communities, to "age in place," rather than being institutionalized.[10]

Aging In Place

According to experts on elder issues, most elders will do whatever it takes to stay in their own homes as they grow older.[11] "Aging in place" is a care model that was developed in response to older adults' hesitation and unwillingness to enter traditional long-term care facilities, such as nursing homes. Studies of consumer preferences show that older adults value their independence and are looking for ways to maintain it while still receiving necessary medical and living assistance.[12]

Market trends show that many elders are not interested in leaving their homes.[13] Insurers see this pattern repeatedly and should anticipate their consumers' desire for flexibility in their older years. Home health care should always be available to elders so that they can have the flexibility to make good choices for themselves when they need long-term care.

Long-term care services are expensive. In the year 2000, the average cost for nursing homes in Massachusetts was $76,000 per year.[14] In the next 30 years, these costs are expected to quadruple, bringing Massachusetts' average nursing home costs to

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[7] National Association of Insurance Commissioners. A Shopper's Guide to Long-Term Care Insurance. Kansas City, MO: 2001.

[8] See <http://www.ahca.org/research/nfs/nfs2001-r8a.pdf> (Visited 4 Mar. 2002).

[9] Ibid.

[10] Brandeis University authority on aging, James Callahan, commenting on the DOI's decision to drop the home care benefit requirement from its new rules for long-term care policies sold in Massachusetts, "I can't imagine why they did that. It runs against everything we know about older people, which is that they want to 'age in place', and stay at home as long as possible." (Knox, Richard. "Proposed Coverage Changes Rapped: State Seeks To Ease Long-Term Aid Rules." The Boston Globe. 3 Apr. 1999: B1); Bruce, Ellen. "Background Paper on Long-Term Care In Massachusetts," Gerontology Institute, University of Massachusetts Boston. Apr. 2000.

[11] AARP. Fixing to Stay: A National Survey on Housing and Home Modification Issues. Washington, DC: May 2000.

[12] Ibid.

[13] Ibid.

[14] Commonwealth of Massachusetts. Division of Insurance. Your Options for Financing Long-Term Care: A Massachusetts Guide. Boston, MA: Jan. 2002.

approximately $304,000 per year.[15, 16] The nursing home population is expected to double during this same time period.[17] Massachusetts residents spent $3.5 billion in 1998 on nursing home care.[18] The average cost for assisted living facilities is $36,000 per year in Massachusetts.[19] By comparison, home care can be less expensive.[20] However, long-term care costs can fluctuate dramatically based on the needs of the patient, which makes financial planning for this type of care difficult.[21]

A Middle-Class Problem

Individuals who are either wealthy or poor are in a relatively good position to pay for their long-term care needs. Some individuals are wealthy enough to pay for their long-term care costs out-of-pocket.[22] In Massachusetts, individuals pay out-of-pocket for approximately 32 percent of the costs of long-term care.[23]

Our country's poorest seniors can rely on Medicaid, the government healthcare safety net for low-income Americans, to pay for long-term care costs.[24] Medicaid covers about 40 percent of long-term care costs overall.[25]

However, most Massachusetts residents cannot afford to pay for years of long-term care out-of-pocket or qualify for Medicaid coverage. Middle-class individuals are left with few options for covering expensive long-term care needs. These individuals may be unaware that their current healthcare policies, Medicare (the government's health

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[15] Stucki, Barbara and Mulvey, Janemarie. "Can Aging Baby Boomers Avoid the Nursing Home?" American Council of Life Insurers, Washington, DC. Mar. 2000.
[16] Commonwealth of Massachusetts. Division of Insurance. Your Options for Financing Long-Term Care: A Massachusetts Guide. Boston, MA: Jan. 2002.
[17] See <http://www.acli.com/public/advocacy/retirement/content/ltc.htm> (Visited 4 Dec. 2000).
[18] United States. Office of the Actuary, Health Care Financing Administration. Massachusetts Health Expenditures, 1980-1998. Baltimore, MD: 17 Jul. 2000.
[19] Commonwealth of Massachusetts. Division of Insurance. Your Options for Financing Long-Term Care: A Massachusetts Guide. Boston, MA: Jan. 2002.
[20] Ibid.
[21] AARP. The Costs of Long-Term Care: Public Perceptions Versus Reality. Washington, DC: Dec. 2001.
[22] Typical costs of long-term care: $20,000 to $118,000 annually for staying at home with 4 to 24 hour care (payment for a home health aide at $13.50 per hour); $30,000 to $60,000 rent for living in an assisted living or congregate living facility; $14,000 to $20,000 annualized monthly fee for a continuing care facility, in addition to a one time entrance fee of $100,000 to $400,000 (often 80% to 90% refundable); and $50,000 to $96,000 for a nursing home; National Association of Insurance Commissioners. A Shopper's Guide to Long-Term Care Insurance. Kansas City, MO: 2001.
[23] Bruce, Ellen. "Background Paper on Long-Term Care In Massachusetts." Gerontology Institute, University of Massachusetts Boston. Apr. 2000.
[24] Medicaid, renamed "MassHealth" in Massachusetts, is financed by state and federal funds equally and is administered by the Massachusetts Division of Medical Assistance under Title XIX of the federal Social Security Act, 42 USCS sec. 1396 et seq., and Massachusetts General Laws, ch. 118 E
[25] Bruce, Ellen. "Background Paper on Long-Term Care In Massachusetts." Gerontology Institute, University of Massachusetts Boston. Apr. 2000.

insurance program for elders) or supplemental Medicare policies that individuals purchase on their own will not cover long-term care costs.[26, 27]

When faced with the dilemma of paying for long-term care needs, too often elderly middle-income individuals spend down their assets to become eligible for Medicaid.[28] When residents make this choice, limited government resources are further stretched as the number of individuals on Medicaid grows. Long-term care insurance is one option that is now available to middle-income individuals who can afford it.

Long-Term Care Insurance

Long-term care insurance is an insurance plan that typically provides a daily, fixed dollar amount toward the costs of nursing home, assisted living or home health care costs for a number of years when policy owners can no longer live at home without assistance.[29] This type of insurance was first offered by a small number of insurance companies in the mid-1980s.[30] These policies provide individuals with an option to plan ahead by purchasing an insurance policy that covers their long-term care needs. Since the premiums on these policies can be expensive, it is often middle-income to upper-income individuals who purchase them. Individuals typically purchase their policies well before they need them (usually in their mid-50s to mid-60s) in order to take advantage of a lower, age-based premium.[31]

Types of Plans

Long-term care insurance plans may be sold as individual policies or group policies.

- *Individual Policies*: Consumers typically purchase individual long-term care insurance policies through an agent or by direct mail or phone solicitations. These policies are guaranteed renewable, which means that policyholders have

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[26] AARP. The Costs of Long-Term Care: Public Perceptions Versus Reality. Washington, DC: Dec. 2001.

[27] National Association of Insurance Commissioners. A Shopper's Guide to Long-Term Care Insurance. Kansas City, MO: 1996.

[28] To be eligible for Medicaid (called "MassHealth" in Massachusetts) a person generally must "spend down" his or her assets to $2,000 with the exception of certain allowances to avoid impoverishment of his or her spouse. The spend down requirement does not apply to a person's primary residence, regardless of its value. However, a lien attaches to the residence for reimbursement to the state after the Medicaid recipient's death. For details see Mass. Gen. Laws ch. §118E.

[29] See <http://www.acli.com/public/advocacy/retirement/content/ltc.htm> (Visited 4 Dec. 2000); National Association of Insurance Commissioners. A Shopper's Guide to Long-Term Care Insurance. Kansas City, MO: 2001; Commonwealth of Massachusetts. Division of Insurance. Your Options for Financing Long-Term Care: A Massachusetts Guide. Boston, MA: Jan. 2002.

[30] Commonwealth of Massachusetts. Division of Insurance. A Report on Long-Term Care Insurance: The Results of a 1996 Survey. Boston, MA: 15 Jul. 1997.

[31] Cushman, Catherine. President, Senior Insurance Solutions. Personal interview. 7 Dec. 2001; Commonwealth of Massachusetts. Division of Insurance. Your Options for Financing Long-Term Care: A Massachusetts Guide." Boston, MA: Dec. 1999; American Council of Life Insurers. Making the Retirement Connection: The Growing Importance of Long-Term Care Insurance in Retirement Planning. Washington, DC: Mar. 2001.

the right to renew the policy each year.[32] The insurance company may not change the coverage or refuse to renew it unless policyholders fail to pay their premiums. Massachusetts regulates individual policies through the Division of Insurance (DOI). However, these regulations were relaxed significantly in January 2000 and now provide less protection for consumers.[33]

- *Group Policies:* In 1996, group policies accounted for more than half of the policies sold in the Commonwealth.[34] Unlike individual policies, group policies are not required to meet any minimum standards and insurers do not have to submit policy information for approval on these plans to the DOI in Massachusetts.[35] Employers (e.g., the federal government), organizations (e.g., AARP) or specialty associations (e.g., the Massachusetts Medical Society) may offer group plans to their employees or members. These policies typically provide quality products because an educated member of the agency or association is charged with assessing, selecting and monitoring the product on behalf of its members.[36] However, not all group policies are sold this way. Insurers also establish groups for marketing purposes where a purchaser will nominally join a "group" at the time the policy is purchased. Some consumer advocates report that group policies have been sold to individuals who are unaware that these policies are not required to meet any minimum standards.[37]

Lapse Rates

The policy lapse rate reflects the number of individuals who stopped payment on their policies, switched policies, exhausted their payments, or died before using their policy.[38]

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[32] Commonwealth of Massachusetts. Division of Insurance. Your Options for Financing Long-Term Care: A Massachusetts Guide. Boston, MA: Jan. 2002.

[33] "Cellucci to Allow Insurers to Sell Cheaper Policies to Elders." The Boston Globe 11 Sept. 1999.

[34] Commonwealth of Massachusetts. Division of Insurance. A Report on Long-Term Care Insurance: The Results of a 1996 Survey. Boston, MA: 15 Jul. 1997.

[35] Beagan, Kevin. Director of Health Unit, State Rating Bureau, Massachusetts Division of Insurance. Personal interview. 28 Feb. 2002. While the Senate Post Audit and Oversight Committee recognizes that group policies are included in several sections of the long-term care regulations (Massachusetts Regulations 211 CMR 65:09, Requirements for Disclosure; 65:10, Protection Against Unintentional Lapse; and 65:11, Prohibition Against Post Claims Underwriting), the Committee concluded that group policies are fundamentally unregulated in Massachusetts. Insurers offering group policies do not need to file paperwork or provide information to DOI regarding these policies, leaving them virtually undetected by DOI. As a result, DOI does not and cannot track group policies unless consumers proactively bring problems with these policies to DOI's attention. Furthermore, while individual policies are held to explicit standards in the DOI regulations (Massachusetts Regulations 211 CMR 65:05, Minimum Standards for Individual Policies; 65:06, Mandatory Benefit Offers for Individual Policies; and 65:07, Form and Rate Filing Procedures for Individual Policies), group policies are not. According to Kevin Beagan, DOI does not have any authority under Mass. Gen. Laws ch. 175, §110, or any other statute, to regulate group long-term care policies in this way.

[36] Turnbull, Nancy. Director of Education Programs, Health Policy Management, Harvard School of Public Health. Personal interview. 15 Feb. 2002; Erickson, Jenny. Vice President, Legislative & Regulatory Affairs, Life Insurance Association of Massachusetts. Personal interview. 20 Feb. 2002.

[37] Norman, Al. Executive Director, Mass Home Care Association. Personal interview. 28 Nov. 2001.

[38] The number of people who died and, therefore, let their policy lapse is estimated to be a relatively small percentage of the total; Commonwealth of Massachusetts. Division of Insurance. A Report on Long-Term Care Insurance: The Results of a 1996 Survey. Boston, MA: 15 Jul. 1997.

The lapse rate is a good indicator for determining whether or not policyholders are able to sustain the coverage they originally purchased. The most current information available dates back to 1996 when the policy lapse rates for individual policies in Massachusetts was 23.3 percent.[39] The group policy lapse rate for Massachusetts policies in 1996 was 25.7 percent.[40] This means that approximately one-fourth of all individual and group long-term care insurance policyholders let their policies lapse.

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[39] Commonwealth of Massachusetts. Division of Insurance. A Report on Long-Term Care Insurance: The Results of a 1996 Survey. Boston, MA: 15 Jul. 1997.
[40] Ibid.

Not all Insurers are Alike

Massachusetts resident Joan Reardon remembers the dinner conversation with her uncle, Thomas, when he told her about being approached by an agent from American Travellers Insurance (now Conseco). He already had a long-term care insurance policy with John Hancock. However, an American Travellers agent encouraged him to purchase their policy in addition to his current policy since long-term care services had become so expensive. In October 1998, Thomas decided to purchase a second long-term care insurance policy with American Travellers. Both policies had essentially the same benefits and premium.

In July 1999, Thomas had a heart attack. After being in the hospital for several weeks, he moved to a nursing home and then to an assisted living facility. Joan contacted both John Hancock and American Travellers to place claims with each company and waited for payment after the 100-day elimination period expired.

Joan had a very pleasant experience with John Hancock – information was requested and gathered in a timely manner and payments were disbursed. At the same time, Joan received tremendous aggravation from American Travellers and was given multiple reasons defending delays in payment. After months of unrelenting calls, letters and follow-up, payments were finally disbursed.[41]

Thomas was lucky to have Joan as his advocate. Not only was she persistent, but she was very thorough in documenting every call made and letter sent to American Travellers. Joan was astonished to see the difference in the behavior of the two companies when it came time to collect on the benefits of what were essentially the same policy. She stated, "[Insurance companies] know that an elderly person won't go through all of this – they would just give up. I found it so upsetting."[42]

Although Joan was successful in her efforts, she and her uncle were at a disadvantage from the start of this process. Her uncle was unable to compare American Travellers' record to other insurers. If information on policy lapse rates, claims denial rates, and other information had been accessible to him, he might have made different purchasing decisions. In addition, Joan did not have a formal third-party appeal process under which she could seek resolution of her complaints. Had the issue not been resolved, she would have been left with few alternatives.

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[41] Joan was told by American Travellers that since Thomas had the policy for less than two years he was still in the "contestable period" of his policy. She felt they were simply looking for a reason to make him ineligible and deny his payments.

[42] Reardon, Joan. Personal interview. 28 Feb. 2002.

Policy Features
Like all insurance plans, long-term care insurance policies differ greatly in what they offer the consumer and how much they cost. Some of the ways in which coverage can differ include:

- *Type of Coverage:* Policies differ in the type of coverage they provide. Some offer "nursing home only" care, while other plans cover assisted living facilities and in-home care. As more elders choose to stay at home or enter assisted living facilities, "nursing home only" coverage becomes significantly less valuable.

- *Amount of Coverage:* The amount of coverage may also differ from policy to policy. Some plans offer lifetime benefits, others provide two to five years of coverage and others offer significantly shorter periods of coverage. Plans also differ in the amount of daily or monthly benefit allowed by the plan (e.g., some plans may provide $100 for nursing home care per day, while others may provide $300 per day).

- *Start of Coverage:* "Benefit triggers" are used to determine if and when benefits are payable to the policyholder. These triggers, called Activities of Daily Living (ADLs), include needing assistance with eating, dressing, bathing, toileting, moving from bed to table to bath, etc.[43] Depending on the terms of the policy, help with two or more ADLs may be needed before a claim can be filed.[44]

- *Elimination Period:* Once a claim is filed, policyholders may not receive benefits immediately. Policyholders must wait for the "elimination period" to end before they receive any funds. The elimination period is similar to a deductible for automobile or homeowners insurance policies in that the policyholder pays some costs out-of-pocket before the insurer begins paying. Elimination periods can vary significantly in length. For example, some plans have a 90-day elimination period. This means the insurer will not provide any coverage for long-term care services for the first 90 days after a policyholder has filed a claim. Other policies have a 365-day elimination period, which means the policyholder must wait for an entire year before they receive payments from their insurer. The policyholder is responsible for any costs incurred during the elimination period.

- *Inflation Coverage:* Some plans have a cost-of-living adjustment while others do not adjust for inflation. Without inflation coverage, the value of a policy decreases over time. If a consumer purchased a policy without inflation protection that pays $125 a day for nursing home care, it would have covered close to 60 percent of

[43] National Association of Insurance Commissioners. A Shopper's Guide to Long-Term Care Insurance. Kansas City, MO: 2001.
[44] Commonwealth of Massachusetts. Division of Insurance. Your Options for Financing Long-Term Care: A Massachusetts Guide. Boston, MA: Jan. 2002.

nursing home costs in 2000, yet it will only cover 15 percent of estimated costs in the year 2030.[45]

Out-of-Date Data in Massachusetts

The last time DOI conducted a voluntary comprehensive survey of all long-term care insurance providers who sell any long-term care insurance policies in the Commonwealth was 1996. That survey provided important information that could be used by consumers to make informed choices. The information included:

- policy lapse rates,
- marketing practices,
- nursing home and home health coverage, and
- pricing of policies.

There has been no other DOI survey completed since 1996, and there is no requirement for the regular collection of such critical consumer data.[46]

Increasing Sales of Long-Term Care Insurance Policies

The pace of sales of long-term care insurance policies has increased significantly in the last few years. Nationally, the number of long-term care insurance policies sold has grown at an average rate of about 21 percent annually between 1987 and 1998, with more than 5.8 million policies sold as of June 30, 1998.[47] Massachusetts saw an annual increase of 18 percent in the number of long-term care policies sold from 1994 to 1996, with 18,467 individual and 22,868 group policies sold as of December 1996.[48]

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[45] Commonwealth of Massachusetts. Division of Insurance. Your Options for Financing Long-Term Care: A Massachusetts Guide. Boston, MA: Jan. 2002; Massachusetts nursing home costs for 2030 are projected to be $304,000 per year. A policy that provides $125 per day without inflation protection would be worth $45,625 per year. By 2030, this policy would only cover 15 percent of estimated nursing home costs.

[46] Beagan, Kevin. Director of Health Unit, State Rating Bureau, Massachusetts Division of Insurance. Personal interview. 25 Jan. 2002; DOI is currently conducting a similar survey that is scheduled for release in mid-2002.

[47] See <http://www.ltcg.com/ltcindustry.asp> (Visited 4 Jan. 2002).

[48] Commonwealth of Massachusetts. Division of Insurance. A Report on Long-Term Care Insurance: The Results of a 1996 Survey. Boston, MA: 15 Jul. 1997.

National Sales Figures of Long-Term Care Insurance Policies

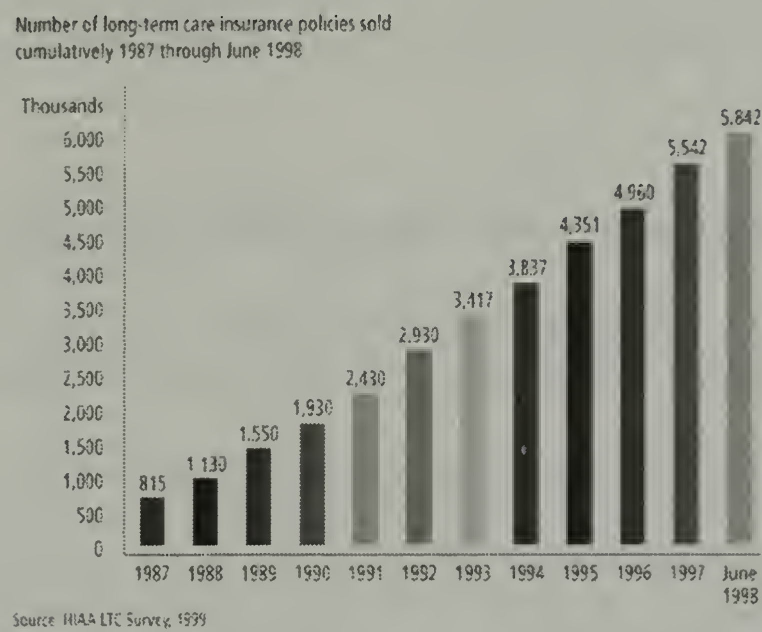

Figure 2. Source: http://www.ltcg.com/ltcindustry.asp

The number of policyholders in the nation and in Massachusetts still remains a tiny fraction of the market despite the increases in the aging population.[49] Nationally, 2.5 percent of long-term care costs are financed by long-term care insurance.[50] In Massachusetts, 4 percent of long-term care costs are financed with these policies.[51] As of December 1996, 41,335 people in the Commonwealth were long-term care policyholders.[52] This represents a 51 percent increase in the number of policies held since 1994.[53] In 1996, the most current information available, the average annual premium for individual and group policies in the Commonwealth was $1,785 and $808, respectively.[54]

Long-term care insurers typically blame lack of market penetration on the cost of their products, the ignorance of the public and competition with Medicaid.[55] While it is

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[49] See <http:www.urban.org/Template.cfm?Section=Research&NavMenuID=141&template=TaggedContent/ViewPublication.cfm&PublicationID=6931> (Visited 31 Jan. 2002); Bruce, Ellen. "Background Paper on Long-Term Care In Massachusetts." Gerontology Institute, University of Massachusetts Boston. Apr. 2000.

[50] Weiner, Joshua et al. "Federal and State Initiatives to Jump Start the Market for Private Long-Term Care Insurance" 8 Elder L.J. 57, 2000.

[51] Bruce, Ellen. "Background Paper on Long-Term Care In Massachusetts." Gerontology Institute, University of Massachusetts Boston. Apr. 2000.

[52] Commonwealth of Massachusetts. Division of Insurance. A Report on Long-Term Care Insurance: The Results of a 1996 Survey. Boston, MA: 15 Jul. 1997.

[53] Calculations completed using: Commonwealth of Massachusetts. Division of Insurance. A Report on Long-Term Care Insurance: The Results of a 1996 Survey. Boston, MA: 15 Jul. 1997.

[54] Commonwealth of Massachusetts. Division of Insurance. A Report on Long-Term Care Insurance: The Results of a 1996 Survey. Boston, MA: 15 Jul. 1997.

[55] Levy Institute of Public Policy. Financing Long-Term Care. Policy Brief No. 59. Feb. 2000; Bruce, Ellen. "Background Paper on Long-Term Care In Massachusetts." Gerontology Institute, University of Massachusetts Boston. Apr. 2000; Weiner, Joshua et al. "Federal and State Initiatives to Jump Start the Market for Private Long-Term Care Insurance" 8 Elder L.J. 57, 2000.

unclear whether long-term care insurance will ever play a major role in financing long-term care in the United States, federal and state officials have recognized the governmental savings that can result from increasing utilization rates of these policies.[56, 57]

Historic Pricing Problems with Long-Term Care Insurance

Some insurance companies have been known to engage in inappropriate pricing practices that lead to significant problems for policyholders trying to file claims.

"Low-balling" occurs when policies are sold to all applicants, both healthy and unhealthy alike, at a very low price. These pricing practices often lead to a significant increase in market share for the insurer. When the unhealthy policyholders start to file claims, the insurer pleads that it has to pay out more money in claims than its actuaries initially forecast. To compensate for this actuarial error, the insurer increases the premiums on a whole policy class.[58] A class is determined by any single variable that is used by the insurance company to group people.[59]

Premium increases often force some policy owners to let their policies lapse. Insurers can actually benefit from higher lapse rates because the number of policyholders filing claims decreases. Consumers who are forced to let their policies lapse usually do not get back the premium payments that they already contributed to their policy. Since these individuals do not get their premium payments back and will not be filing claims, this money then can be used to fund claims submitted by policyholders who maintained their policies over time. This situation improves the insurer's bottom line.[60]

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[56] Weiner, Joshua et al. "Federal and State Initiatives to Jump Start the Market for Private Long-Term Care Insurance" 8 Elder L.J. 57, 2000.
[57] Rose, Gene. "The 2000 Top 20 Forecast." State Legislatures Feb. 2000.
[58] Davis, Ann. "Shaky Policy: Unexpected Rate Rises Jolt Elders Insured For Long-Term Care, Two Purveyors in Particular Implied Stable Premiums But Boosted Them Often, Signing Up the Less-Healthy." Wall Street Journal 22 Jun. 2000.
[59] Erickson, Jenny. Vice President, Legislative & Regulatory Affairs, Life Insurance Association of Massachusetts. Personal interview. 21 Mar. 2002
[60] Davis, Ann. "Shaky Policy: Unexpected Rate Rises Jolt Elders Insured For Long-Term Care, Two Purveyors in Particular Implied Stable Premiums But Boosted Them Often, Signing Up the Less-Healthy," The Wall Street Journal 22 Jun. 2000.

Companies Competing for Clients by Low-Balling

A California couple, Virdon and Camille Strey, bought their long-term care policies from two different companies in the late 1990s. After the insurers hiked Mr. Strey's premium 41.6 percent and boosted Mrs. Strey's premium 20 percent, the couple immediately let both policies lapse because they could no longer afford them. By that time, replacement with a less expensive policy was impossible because the Streys had become uninsurable by industry standards. Mr. Strey was hooked up to an oxygen tank, and Mrs. Strey was diagnosed with severe osteoarthritis. Said Mr. Strey, 82, in *The Wall Street Journal*, "I'd been suckered."[61]

The Streys were victims of two large rival insurance companies, who together control more than 30 percent of the $4.6 billion long-term care insurance market.[62] According to a front-page article in *The Wall Street Journal,* these companies slashed premiums and marketed policies aggressively to all comers, the healthy and less healthy alike, particularly in three states with high elderly populations (California, Florida and Pennsylvania).[63] These companies, Conseco, Inc. and archrival Penn Treaty American Corp., then repeatedly jacked up premiums on the policies they sold by 8 to 40 percent when the less healthy started to file claims. As a result, lapse rates soared.

Insurers usually rely on underwriters to determine whether or not to issue a policy to a consumer and at what price. However, neither company waited for underwriters to do their work. Rob Brown, an underwriter who worked for each of the companies, told *The Wall Street Journal* in an interview that they competed to "get applications approved quicker… like in three to five days."[64] "Officials at Conseco and Penn Treaty say their long-term care departments used to eagerly snap up customers with diabetes or a history of strokes, people that other insurers shunned." [65]

These companies engaged in low-balling where the insurers purposely under-priced their policies in order to attract new consumers and then raised the premiums after the policies had been purchased. Without proper protections, these same tactics could be used to deceive Massachusetts residents.

Policyholders can also face problems when it comes time to file a claim. Most long-term care insurance providers require applicants to provide specific medical information and authorization to obtain medical and hospital records. In theory, an underwriter would

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[61] Davis, Ann. "Shaky Policy: Unexpected Rate Rises Jolt Elders Insured For Long-Term Care, Two Purveyors in Particular Implied Stable Premiums But Boosted Them Often, Signing Up the Less-Healthy." The Wall Street Journal 22 Jun. 2000.
[62] Ibid.
[63] Ibid.
[64] Ibid.
[65] Ibid.

review this information, which can take several weeks or more, and the insurer would then either decline to issue the policy or issue it with an appropriate premium rate that reflects the insurer's risk. According to some industry employees, underwriters do not actually review the medical records of many applicants.[66]

"Post-claims underwriting" is the technical term for an insurer's failure to do its risk assessment homework and set a premium that will support the policy before issuing it. More specifically, an insurer accepts insurance applications without review of the applicants' health or medical records, issues the policies and collects the same annual premium from the healthy and unhealthy applicants alike. Years later, after the policyholders submit claims, the insurance company finally reviews the consumers' medical records and denies coverage by finding a disqualifying medical condition. It is essentially an attempt to rescind policies after claims have been made, rather than eliminating high-risk applicants in the underwriting process by refusal or by quoting a premium that reflects the actual risk.

Policyholders are hurt by this practice because they have paid their premiums for a number of years, essentially diverting long-term care funds into an unusable policy. Even if the insurance company refunds the premiums, the consumer has already filed a claim, is in need of long-term care services and is, in all likelihood, no longer eligible to buy a replacement policy.

The current DOI long-term care insurance regulations have a section entitled "Prohibition Against Post Claims Underwriting."[67] This section of the regulations requires insurers to ask clear and unambiguous questions on the application regarding an individual's health status and mandates that the consumer answer all questions truthfully. However, the regulation does not require that this information be reviewed by the insurer. It is unclear whether this provision prevents the type of possible abuses that can occur from post-claims underwriting.

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[66] Brenerman, David. Assistant Vice President of Government and Public Affairs, UnumProvident. Personal interview. 21 Mar. 2002; Roche, Marie. Director, Long-term Care Contracts and Legislative Services, John Hancock Financial Services, Inc. Personal interview. 21 Mar. 2002.
[67] Massachusetts Regulations 211 CMR 65:11.

Class Action Lawsuits

In the absence of effective consumer regulatory protection, some have resorted to the courts. In the late 1990s, Attorney Allan Kanner of New Orleans took the lead in filing a class action suit against Acceleration Life and Commonwealth Life in North Dakota, Florida and Wyoming to address problems faced by thousands of consumers due to precipitous premium hikes. [68, 69, 70, 71]

In this case, an internal company memo stated that no money would be made on the policies in question and the solution was to "file large rate increases to encourage higher lapses."[72] Kanner reported to the court that it was no surprise that although 2,000 of these policies were originally sold in North Dakota, fewer than 130 are still in force.[73] The parties settled the case nationwide on the eve of trial for $14.7 million.[74]

The unconscionable conduct exposed in these companies is not unique. Kanner has also filed a class action suit against Conseco (formerly American Travellers Life Insurance) on behalf of California policyholders who were forced to let their policies lapse due to large premium increases and he has filed a similar action in Texas against National Foundation Life Insurance.[75, 76, 77]

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[68] Hanson, et al. v. Acceleration Life Insurance Co., No. CIV.A3-97-152, 2000 WL 33310298 (D.N.D. June 21, 2000). NORTH DAKOTA
[69] Shankland, et al. v. Acceleration Life Insurance Co., No. 99-1411-C1-20, 6th JDC (Fla. Cir. Ct.) FLORIDA
[70] Bugg, et al. v. Acceleration Life Insurance Co., et al., No. 99 CV 190J (D. Wyo.). WYOMING
[71] Superior Court, East Central Judicial Department, Hanson v. Acceleration Life. (Ageon bought the business of these companies in 1997).
[72] Quinn, Jane Bryant. "Staying Ahead." Dover-Sherborn TAB 14 Oct. 1999: 25.
[73] Ibid.
[74] Kanner, Allan. Attorney. Allan Kanner Associates, P.C. Telephone interview. 22 Feb. 2002.
[75] Orange County Superior Court, Blau V. American Travellers Life (Conseco); San Diego County Superior Court, Alva Lane and Linda Pequegnat v. American Travellers Life.
[76] Lane and Pequegnat, et al. v. American Travellers Life Insurance Co., No. GIC 745641 (Cal. Dist. Ct.) CALIFORNIA
[77] Dory, et al. v. National Foundation Life Insurance Co., No. 342-184814-00, 342nd JDC (Tex. Dist. Ct.). TEXAS

Currently, forty-six states have laws that regulate long-term care insurance. Many of these laws are based on a model developed by the National Association of Insurance Commissioners (NAIC). Massachusetts is one of the four states that has failed to pass such a law. However, long-term care insurance is not entirely unregulated by the Commonwealth. DOI, the state agency charged with regulating insurance products, currently regulates individual long-term care insurance policies. DOI takes the position that it has the authority to regulate individual long-term care insurance policies as "sickness and accident" insurance under the broad state law that pertains to individual insurance policies.[78]

The lack of a specific Massachusetts law that pertains directly to long-term care insurance is troubling for several reasons. It is questionable whether the broad state law for individual insurance policies actually applies to long-term care insurance. DOI's interpretation of this law has never been challenged and, therefore, has never been decided by the courts. As a result, DOI's authority, or lack of authority, to regulate long-term care policies remains an open-ended question. In addition, laws that set minimum policy standards and provide consumer protections are much more immune to changes by the administration or political influence. Without such a law, a state agency can elect whether or not to develop, change or enforce regulations.[79] Although this flexibility is useful and necessary in some situations, it can create significant inconsistencies from one administration to the next. Finally, group long-term care insurance policies are not required to meet any minimum standards and are essentially unregulated.[80] DOI takes the position that it does not have the statutory authority to regulate group long-term care insurance policies.[81] This leaves thousands of Massachusetts consumers vulnerable to unregulated group long-term care insurance products.

National Association of Insurance Commissioners Model Standards

The National Association of Insurance Commissioners (NAIC) is a non-profit organization made up of insurance regulators from the 50 states, the District of Columbia and the four United States territories.[82] "The mission of the NAIC is to assist state insurance regulators, individually and collectively, in protecting the public interest, promoting competitive markets and facilitating the fair and equitable treatment of

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[78] Mass. Gen. Laws ch. 175, §108 (2000); Beagan, Kevin. Director of Health Unit, State Rating Bureau, Massachusetts Division of Insurance. Personal interview. 25 Jan. 2002.

[79] Massachusetts has had long-term care insurance regulations in place since 1989, however DOI relaxed these regulations in 2000. The Massachusetts Regulations 211 CMR 65, were revised in 1999 and went into effect on Jan. 1, 2000; Knox, Richard. "Proposed Coverage Changes Rapped State Seeks To Ease Long-Term Aid Rules." The Boston Globe 3 Apr. 1999: B1.

[80] Massachusetts Regulations 211 CMR 65.

[81] Beagan, Kevin. Director of Health Unit, State Rating Bureau, Massachusetts Division of Insurance. Personal interview. 25 Jan. 2002.

[82] See <http://www.naic.org/1misc/aboutnaic/about/about01.htm> (Visited 17 Nov. 2001).

insurance consumers."[83] NAIC also promotes the "reliability, solvency and financial solidity of insurance institutions and supports and improves state regulations on insurance." [84]

For fifteen years, NAIC worked in conjunction with regulators, legislators, insurance industry representatives, and consumers to create a comprehensive uniform model law (referred to as the NAIC Act) and related regulations for long-term care insurance.[85] The act and regulations, which are continually updated and amended, do the following:

- define minimum benefits for policies offering home health and community health benefits;
- outline guidelines for policies with minimum benefit requirements;
- establish reporting requirements for insurers detailing lapse rates, number of replacement policies sold, records on agents, etc.;
- regulate insurance marketing practices and advertising guidelines;
- develop and distributes suitability standards for all policies sold in each state; and
- require insurers to offer at least one plan with built-in inflation coverage.[86]

The insurance industry has long supported nationwide adoption of the NAIC model act and regulations.[87] Many consumer advocates also support the adoption of the NAIC model as a framework for standards, with the actual standards going above and beyond what is offered in the model. Al Norman, the Executive Director of Mass Home Care Association and a former consumer representative to NAIC, states: "The NAIC model law and regulations should be the starting point for the long-term care insurance products sold in the Commonwealth. We should be building from that base upward." [88]

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[83] See <http://www.naic.org/1misc/aboutnaic/mission_stmt.htm> (Visited 12 Mar. 2002).
[84] Ibid.
[85] Pellow, Wendy. Legislative and Regulatory Counsel, National Association of Insurance Commissioners. E-mail to the principal writer. 19 Mar. 2002.
[86] National Association of Insurance Commissioners. Long-term Care Insurance Model Regulations. Kansas City, MO: 2001.
[87] Pellow, Wendy. Legislative and Regulatory Counsel, National Association of Insurance Commissioners. E-mail to the principal writer. 19 Mar. 2002.
[88] Norman, Al. Executive Director, Mass Home Care Association. Personal interview. 2 Feb. 2002.

The Purpose of the NAIC's Model Act and Related Regulations

The purpose of the National Association of Insurance Commissioners model regulations is to:

- promote the public interest;
- promote the availability of long-term care insurance coverage;
- protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices;
- facilitate public understanding and comparison of long-term care insurance coverage; and
- facilitate flexibility and innovation in the development of long-term care insurance.[89]

Using the NAIC Act and Regulations at the State Level

While state laws and regulations vary significantly, virtually every state in the country has adopted components of the NAIC model law or regulations. Massachusetts has adopted some of these provisions by regulation. For example:

- The NAIC model regulations set out provisions for insurers that protect consumers against unintentional policy lapses. Some of these provisions include providing a notice before the lapse or termination of a policy and reinstating policies that may have been improperly terminated. According to the NAIC, 29 states have either passed legislation or created regulations that include this language from the NAIC model.[90]

- The NAIC model regulations set minimum standards for any home health care services that are provided in a policy. The model regulations state that long-term care insurance policies that offer a home health care component are prohibited from excluding care provided by a home health aide, requiring care from a skilled nurse or therapist, and limiting benefits to services provided by Medicare-certified agencies. The model regulations also address issues related to home health care costs. The NAIC affirms that all but five states have incorporated at least some or all of its model language in statute or state regulations.[91]

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[89] National Association of Insurance Commissioners. Long-term Care Insurance Model Act, Kansas City, MO: 2000.

[90] National Association of Insurance Commissioners. Long-term Care Insurance Model Regulations. Kansas City, MO: 2001; National Association of Insurance Commissioners. NAIC's Compendium of State Laws on Insurance Topics: Long-term Care Insurance Regulation Provisions. Kansas City, MO: 2001.

[91] Ibid. Four states impose similar standards, although they do not use the NAIC model language.

- The NAIC model act and regulations both contain sections on nonforfeiture, a provision that allows policyholders who lapse on their policy to get some benefits in return for the premiums they paid. The model act requires insurers to offer this benefit to all policyholders and gives the state Commissioner the authority to regulate these benefits. The regulations then set more specific standards regarding nonforfeiture. Eighteen states follow the NAIC model act and require insurers to offer a nonforfeiture benefit.[92] Eleven states use the nonforfeiture language from the model regulations.[93]

It is apparent that the NAIC's model act and regulations are used by most states seeking to regulate long-term care insurance policies. Each state utilizes different components, while also using additional language and provisions that are not in the model. The NAIC and many states continue to revise their laws and regulations.

Consumer Protections in Other States

The Senate Post Audit and Oversight Bureau interviewed representatives from 46 state regulatory agencies that oversee insurance products (typically called the Department or Division of Insurance).[94] Some of the findings include:

- 43 states regulate individual and group policies,
- 14 states require that suitability standards or guidelines be created and provided to consumers,
- 7 states prohibit the sale of policies that only cover nursing home care,
- 7 states require that some comparison data be provided to consumers, and
- 3 states require that insurance companies send policyholders a yearly statement outlining their policy.

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[92] National Association of Insurance Commissioners. Long-term Care Insurance Model Regulations. Kansas City, MO: 2001; National Association of Insurance Commissioners. NAIC's Compendium of State Laws on Insurance Topics: Long-term Care Insurance Regulation Provisions. Kansas City, MO: 2001.
[93] Ibid. Eight states impose similar standards, although they do not use the NAIC model language.
[94] The survey conducted by the Senate Post Audit and Oversight Committee was conducted between February 25, 2002 and March 15, 2002. Interviews could not be conducted with appropriate individuals from Hawaii, Virginia, Maine, and Vermont.

Regulation and Legislation in Massachusetts

Hitting Close to Home: A Massachusetts Story

Mrs. Lydia Loja Brown of Quincy was already in her 80s and in fading health when a Bankers' Life and Casualty agent talked her into buying a stripped down long-term care insurance policy providing $50 per day for nursing home coverage. "My mother was a cautious woman, and she had been a customer of Bankers' Trust and Life for decades," said George Brown, her son who lives in Chelmsford.

Months later, Lydia went into the hospital and then to a series of assisted living and nursing home settings. Her son George was taking care of her bills and received a "generic" renewal notice from Bankers' Life and Casualty. When he called the insurer, he was told that it was for a "life insurance policy." Since he had just renewed the life insurance policy for his mother, he thought it was a bureaucratic mix-up and ignored the notice.

While going through cancelled checks, George saw a policy number on one check to Bankers' Life and Casualty. When he called to inquire about the policy number, he was told that it was a long-term care insurance policy but that the policy had now lapsed. Lydia died in April 2001.

For nearly a year, George has been trying to resolve his mother's claim.[95] George is pursuing his claim through the Office of the Attorney General, where officials feel that the family is entitled to reimbursement.[96]

Regulations

DOI is the agency in Massachusetts charged with regulating the long-term care insurance industry.[97] Although more than 50 percent of policies sold in Massachusetts are group policies, these policies are not required to meet any minimum standards.[98, 99]

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[95] Brown, George. Phone interview. 25 Mar. 2002; Documents from the Office of the Attorney General related to the case of Lydia Brown.
[96] Froese, Lydia. Public Protection Bureau, Massachusetts Office of the Attorney General. Telephone interview. 1 Apr. 2002. At this point, Bankers' Life and Casualty seems to accept the claim but still has bureaucratic requirements that are unfulfilled.
[97] See <http://www.state.ma.us/doi> (Visited 12 Mar. 2002); Massachusetts Regulations 211 CMR 65:01.
[98] Commonwealth of Massachusetts. Division of Insurance. A Report on Long-Term Care Insurance: The Results of a 1996 Survey. Boston, MA: 15 Jul. 1997.
[99] Commonwealth of Massachusetts. Division of Insurance. Your Options for Financing Long-Term Care: A Massachusetts Guide. Boston, MA: Jan. 2002.

According to DOI, it has never imposed minimum standards on group policies in Massachusetts due to a lack of statutory authority.[100] Consumers who purchase a group plan through their employer, a professional association or organization have a designated advocate representing their group to ensure they are purchasing a quality product. Consumers without an organizational advocate representing them may be at greater risk by purchasing group policies since these policies do not have to meet any minimum standards.

In 1989, soon after long-term care insurance products began appearing in the Massachusetts market, DOI created regulations for individual long-term care policies sold in the Commonwealth. Absent a direct enabling law, DOI derived its authority to set regulations indirectly from Mass. Gen. Laws ch. 175, § 108 governing "sickness and accident" policies.[101] These regulations were revised and new regulations took effect in January 2000.[102] A revision in the regulations was needed since the market and product had significantly changed since 1989.[103] According to DOI, the new regulations were designed to give the consumer more flexibility when choosing a policy.[104] However, a *Boston Globe* article from 1999 reported, "Proponents and critics agree that the new rules are designed to deregulate the long-term care insurance market and permit what insurers call 'flexibility' in benefit design and pricing." [105]

The insurance industry supported the changes in the regulations.[106] The industry had identified policy cost as a primary reason that sales in Massachusetts were low and argued for a free hand to redesign their products.[107, 108] These regulations allowed companies to have the leeway they claimed to need to be innovative in developing lower-cost, lower-benefit policies that would encourage more Massachusetts elders to purchase policies.[109]

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[100] Beagan, Kevin. Director of Health Unit, State Rating Bureau, Massachusetts Division of Insurance. Personal interview. 25 Jan. 2002. Mass. Gen. Laws ch. 175, §110 (2000).
[101] This statute gives DOI regulatory power over individual "sickness and accident" policies, but it is not clear whether long-term care insurance is "sickness and accident insurance." According to Kevin Beagan, some insurers questioned the authority of DOI to establish the regulations and threatened to contest them but never did. Beagan, Kevin. Director of Health Unit, State Rating Bureau, Massachusetts Division of Insurance. Personal interview. 25 Jan. 2002..
[102] According to Kevin Beagan of DOI, a task force that consisted of regulators, consumers, insurers, and other interested parties created the regulations.
[103] Erickson, Jenny. Vice President, Legislative & Regulatory Affairs, Life Insurance Association of Massachusetts. Personal interview. 20 Feb. 2002.
[104] Beagan, Kevin. Director of Health Unit, State Rating Bureau, Massachusetts Division of Insurance. Personal interview. 11 Feb. 2002.
[105] Knox, Richard. "Proposed Coverage Changes Rapped State Seeks To Ease Long-Term Aid Rules." The Boston Globe 3 Apr. 1999: B1.
[106] Erickson, Jenny. Vice President, Legislative & Regulatory Affairs, Life Insurance Association of Massachusetts. Personal interview. 20 Feb. 2002.
[107] "Cellucci to Allow Insurers to Sell Cheaper Policies to Elders." The Boston Globe 11 Sept. 1999.
[108] Erickson, Jenny. Vice President, Legislative & Regulatory Affairs, Life Insurance Association of Massachusetts. Personal interview. 20 Feb. 2002.
[109] "Cellucci to Allow Insurers to Sell Cheaper Policies to Elders." The Boston Globe 11 Sept. 1999.

This revision process provided an opportunity for DOI to develop new regulations to encourage the sale of quality products while maintaining consumer protections; DOI missed this opportunity. Unfortunately, these revisions shortchanged consumers purchasing individual policies in two primary ways:

- *The maximum allowable elimination period or "deductible" increased from 100 days to 365 days.* As a result, Massachusetts policyholders may need to pay out-of-pocket for an entire year once they have filed a claim.

- *Policies no longer need to include a home health care component.* Even though trends show that elders would rather age in place and receive care in their home or an assisted living facility, the Commonwealth now allows policies to be sold that only provide services in nursing homes. When individuals purchase insurance, they are unable to determine whether 20 years later their loved ones will be available to provide care for them. Home health care coverage becomes essential for anyone wishing to remain in their home as they grow older and need assistance with their daily living activities.[110]

Currently, long-term care insurance policies are only appropriate for a relatively small segment of the population who can afford quality policies.[111] Creating a lower quality and less expensive policy lures consumers into purchasing inappropriate products that may not meet their long-term care needs.

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[110] Other changes in the 2000 regulations (211 CMR 65) included mandatory agent training, provisions for unintentional lapses and standardized activities of daily living benefit triggers.

[111] Current and past representatives of DOI, as well as insurance industry representatives and agents have all stated that long-term care policies are not appropriate for every consumer. Beagan, Kevin. Director of Health Unit, State Rating Bureau, Massachusetts Division of Insurance. Personal interview, 25 Jan. 2002; Cushman, Catherine. President, Senior Insurance Solutions. Personal interview, 7 Dec. 2001; Erickson, Jenny. Vice President, Legislative & Regulatory Affairs, Life Insurance Association of Massachusetts. Personal interview. 20 Feb. 2002; Turnbull, Nancy. Director of Education Programs, Health Policy and Management, Harvard School of Public Health. Personal interview. 15 Feb. 2002.

Generating "Junk Policies"

Some consumer advocates found DOI's revised regulations to be quite troublesome and noted significant negative consequences that could result from them.

"[The DOI's 2000] regulations encourage junk policies. This will create more premiums for insurance companies, but very little for the consumer," said Al Norman.[112] Norman claimed the regulations would result in a "race to the bottom" with stripped down benefits to generate more business.[113]

When asked about the revised DOI regulations, California consumer advocate and NAIC Advisory Board Member Bonnie Burns said, "Massachusetts has taken a step backwards with these revised regulations."[114]

Legislative Efforts

The Massachusetts Legislature has failed to pass a law aimed at creating standards for long-term care insurance policies sold in the Commonwealth. Several bills filed in the 2001-2002 legislative session deal with long-term care insurance. These bills seek to employ a variety of strategies to improve the quality, affordability and delivery of long-term care insurance by doing the following:

- rewarding those who purchase long-term care insurance by preventing the state from enforcing Medicaid liens for reimbursement for long-term care costs paid by MassHealth (Medicaid);[115]

- providing income tax credits for individuals who purchase long-term care insurance policies that provide certain minimum benefits;[116]

- making long-term care insurance policies available to state employees through the Group Insurance Commission;[117] and

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[112] "Cellucci to Allow Insurers to Sell Cheaper Policies to Elders." The Boston Globe 11 Sept. 1999.
[113] Knox, Richard. "Proposed Coverage Changes Rapped: State Seeks To Ease Long-Term Aid Rules." The Boston Globe 3 April 1999: B1.
[114] Burns,Bonnie. Director, Consumer Education, California Health Advocates. Personal interview. 30 Nov. 2000.
[115] Massachusetts General Court, House Bill 1416 (Rep. Peter Koutoujian), Legislative Session 2001-2002.
[116] Massachusetts General Court, House Bill 1328 (Rep. David Tuttle) and House Bill 1515 (Rep. Francis Marini), Legislative Session 2001-2002.
[117] Massachusetts General Court, Senate Bill 1432 (Sen. Richard Moore), Legislative Session 2001-2002.

- preventing the state from considering an individual's assets when determining eligibility for MassHealth (Medicaid) payment of nursing home cost, if the individual has purchased a long-term care insurance policy that provides certain minimum benefits.[118]

As of April 2002, the legislature had not voted on any of these bills.

Throughout the 1990s, a comprehensive long-term care insurance bill was introduced in the Senate by Senator Mark Montigny (D-New Bedford). This legislation, which was never adopted, mandated more than 25 consumer protections including that:

- all policies cover care at home as well as in an institution;

- insurers provide written notice to consumers in the event that a claim was denied or a policy is about to lapse;

- rate increase restrictions be imposed on all policies sold in Massachusetts;

- an independent appeal process be created through the Division of Insurance;

- all long-term care insurance agents be trained and certified before selling policies; and

- suitability standards be created for all policies sold in the Commonwealth.[119]

In an effort for the Commonwealth to prepare for the long-term care needs of the state's growing elderly population, the FY 02 budget created a task force that is charged with studying long-term care in Massachusetts. This task force, initiated by Senator Harriet Chandler (D-Worcester), will study long-term care insurance, the quality and availability of long-term care services, and a host of other issues.

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[118] Massachusetts General Court, House Bill 2365 (Rep. Ronald Mariano), Senate Bill 762 (Sen. Richard Moore), Legislative Session 2001-2002.

[119] Massachusetts General Court, Senate Bill 679 (Sen. Mark Montigny), Legislative Session 1997-1998. This bill was not introduced in the 2001-2002 session.

Problems in Massachusetts

Lack of Standards

Long-term care insurance policies have not been standardized and are often complicated and poorly understood by purchasers and insurance agents.[120, 121] The policies vary widely in their benefits, often making the choices for consumers confusing and overwhelming. While it is important that the market is able to work its course and determine the prices and benefits that consumers want in long-term care insurance policies, safeguards must be in place to protect consumers.

The Massachusetts Legislature has failed to pass a law that would provide strong and consistent consumer protections. Massachusetts revised its long-term care regulations in 2000 to give the insurance industry the flexibility it requested in order to develop new policies. However, DOI needs to be sure that consumers are also given a quality product. This balance can only occur if stronger standards for long-term care policies are in place.

Massachusetts lacks several important long-term care insurance consumer protections including the following:

Group policies sold in the Commonwealth are not required to meet any minimum standards.[122] While group policies that are purchased through an employer, association or organization typically provide quality coverage for their members, many group policies do not.[123] Individuals who purchase these policies may be unaware that they are purchasing a group policy.[124]

[120] National Association of Insurance Commissioners. A Shopper's Guide to Long-Term Care Insurance. Kansas City, MO: 1996.
[121] Cushman, Catherine. President, Senior Insurance Solutions. Personal interview. 7 Dec. 2001.
[122] Massachusetts Regulation 211 CMR 65.
[123] Beagan, Kevin. Director of Health Unit, State Rating Bureau, Massachusetts Division of Insurance. Personal interview. 26 Jan. 2002.
[124] Norman, Al. Executive Director, Mass Home Care Association. Personal interview. 28 Nov. 2001.

DOI Regulations of Individual and Group Policies: Comparing Some Required Minimum Standards

Individual Policies	Group Policies
• 365 day maximum elimination period	• no minimum standard
• maximum daily benefits must be clearly defined	• no minimum standard
• lifetime maximum benefit period may not cover less than 730 days	• no minimum standard
• policy benefits must be broad enough in scope to be of economic value to the insured	• no minimum standard
• pre-existing condition limitations must be identified on the front of the policy	• no minimum standard[125]

Despite elders preference to age at home and the lower costs associated with in-home care, long-term care insurance regulations in Massachusetts no longer require a home health care component.[126] This could force many elderly policyholders to either not use their policy or receive care in a nursing home when they would rather stay in their own home.

Consumers are required to make certain decisions about their policy at the time of purchase that cannot be changed at a later date. Automobile, homeowners or other insurance policies typically allow consumers to revisit their policies each year and make adjustments. Consumers who purchase long-term care insurance policies are not always given this same option. Important elements of coverage that consumers may want to review and make modifications to (with appropriate changes in premium costs) include the following:

- *Elimination period*: The elimination period or "deductible" is the amount of time between the first claim and payment.[127] Consumers choose their elimination period at the start of their policy. The shorter the elimination period, the higher the premiums and the lower the amount that the

[125] Massachusetts Regulations 211 CMR 65.
[126] According to the Massachusetts Regulation 211 CMR 65:06, insurers are required to offer at least one plan with a home health care component.
[127] Commonwealth of Massachusetts. Division of Insurance. Your Options for Financing Long-Term Care: A Massachusetts Guide. Boston, MA: Jan. 2002.

policyholder has to pay out-of-pocket for care before the insurer starts to pay.

- *Amount of coverage*: Consumers determine the amount of coverage at the time of purchase. Individuals may face a change in their economic situation over time or insurers may raise the premium on their class of policy. As a result, policyholders may want to increase or reduce their coverage to adjust the cost of their premium. While insurers may allow a policyholder to make these adjustments, there is no requirement that they do so.

- *Inflation coverage*: Consumers choose whether or not they want inflation protection at the time they purchase their long-term care insurance policy. Without inflation coverage, the value of a policy decreases over time. Policyholders who do not purchase this protection are often left with insufficient benefits when they need their policy. For example, an individual may purchase a policy that provides $125 per day to help defray long-term care costs but does not have inflation coverage. Twenty years later that $125 per day allotment will not have the same purchasing power.

- *Nonforfeiture protection*: Nonforfeiture protection allows policyholders to get some benefits in return for the premiums they already paid into the policy if they let their policies lapse.[128] Many individuals purchase policies that seem appropriate for them. However over time, their financial situation changes and they realize they are not able to make such large payments each year or the premiums on their entire class of policies increase. As a result, they are forced to let their policies lapse, and they do not receive any benefits in exchange for the premiums they paid.

There is no third-party appeal process in the Commonwealth. Massachusetts does not have an independent agency to which consumers can address their complaints about long-term care insurance policies and insurers. This lack of an appeal process leaves consumers without a third-party outlet for expressing their concerns or advocating for claims they believe should not have been denied.

Currently, policyholders with complaints may work through an internal process with their insurance provider. This process may involve speaking with a customer service representative or submitting additional documentation. Consumers have expressed their frustration with this process since it is time consuming and can take many months to resolve.[129]

Consumers can also file a complaint with DOI or the Office of the Massachusetts Attorney General. DOI has a Consumer Service department that "responds to inquiries and assists consumers in resolving complaints against insurers, agents, brokers, and

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[128] Ibid.
[129] Reardon, Joan. Personal interview. 28 Feb. 2002.

other licensees. In addition to providing consumers with general insurance information, DOI also advises consumers of their options under their policies, state laws and regulations."[130] The Attorney General's office also has a similar process. While both of these offices have an internal procedure for trying to address these complaints through mediation, neither offers a true appeal process for consumers where the decision of the insurer can be overturned.

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[130] See <http://www.state.ma.us/doi/Consumer/ConsumerService_home.html> (Visited 5 Mar. 2002).

Lack of Safeguards Against Deceptive Marketing Practices

Since long-term care insurance is relatively new, it is often difficult for consumers to be well versed in the intricacies of this product. Uneducated consumers are most at risk for falling prey to deceptive marketing practices.

Pricing People out of Policies

Many individuals purchase long-term care insurance policies with "level premiums," leading many to believe that their premiums will not increase over the course of their policy. However, "level premiums" can, in fact, be increased. While insurers cannot increase a specific consumer's premium, the insurer can increase the premiums on an entire "class" of policies. The class is determined by the insurer, and policyholders are often unaware of the numerous classes to which they belong. This confusion can affect individuals who purchase individual or group plans.

Ninety-four-year-old Harold Hanson from North Dakota bought his "level premium" policy in 1987 for $1,094 a year. He later had his premium hiked to $3,603 per year by his insurer, Accelleration Life. He had to drop his policy because he could no longer afford the premium.[131]

Eighty-three-year-old North Dakotan Nellie McIlroy's "level premium," originally $830 per year in 1987, shot up to $6,638 per year in 1999.[132]

Retirees Larry and Janet Blau of Garden Grove, California, who were living on $2,000 a month, strained their budget to buy a policy that would pay $3,000 a month for home care. Twenty months later their insurer, American Travellers Life, increased their premium by $600 a year, an 18 percent increase. "When you sell somebody a life insurance policy, you don't turn around and jack the price up later because people are dying too fast," Mrs. Blau told *The Orange County Register.* [133]

Consumers are often misled by the promise that their policies will have so-called "level premiums." Purportedly, the term "level premium" is not supposed to be used in the sale of long-term care insurance policies.[134] However, the term continues to be used by insurers, agents and consumers. Consumers also are told that their individual premiums cannot be increased based on age or illness, yet insurers can and do raise

[131] Quinn, Jane Bryant. "Buyer Beware with Long-Term Care Insurance." Dover-Sherborn Tab 14 Oct. 1999.
[132] Ibid.
[133] Quach, Hahn Kim. "Seniors Caught in Insurance Rate Squeeze." The Orange County Register. 25 Jul. 2000.
[134] Brenerman, David. Assistant Vice President of Government and Public Affairs, UnumProvident. Personal interview. 21 Mar. 2002. According to Mr. Brenerman, industry standards now discourage the use of the term "level premium" and encourage the use of the term "guaranteed renewable."

rates for "classes" of policyholders. A class is a term that is used to describe a group of policyholders. This group may consist of individuals who have the same policy form number, live in the same state, are the same age, or purchased a policy during a particular time frame.[135] Even if an insurer does not raise an individual policyholder's premiums but increases the premiums of a class that includes this individual, he or she will be subjected to a rate increase.

Rising Rates in Massachusetts

Although Massachusetts has not suffered the kind of extraordinary premium increases in long-term care insurance policies that states like California and North Dakota have experienced, there have been examples of significant rate increases on so-called "level premium" policies.

In March 2001, for example, the Fortis Insurance Company boosted its premiums by 35 percent for a class of policies.[136] According to a filing by Fortis to the DOI, Fortis requested the rate increase because the underlying actuarial assumptions made by Fortis' actuaries were inaccurate. The company was losing money on those policies, in part because the lapse rates they expected had been overestimated. Fortis had estimated that voluntary lapse rates for the first year would be about 15 percent. However, Fortis' projections were wrong. Lapse rates were lower than expected; therefore, Fortis requested a rate increase to cover costs and arguably force more individuals to let their policies lapse.

Robert and Mary Broghamer of Millbury, Massachusetts were among the policyholders forced to pay the new, higher premiums. "I'm 75 years old. I don't have the option of shopping around for another plan," said Robert.[137]

Companies are not required to develop financial suitability standards for the policies they sell in Massachusetts. Suitability standards are guidelines that help consumers determine whether or not they should purchase a long-term care insurance policy. These standards provide a framework for consumers by helping them determine whether their financial portfolios qualify them as good candidates for specific long-term care insurance policies. For example, these guidelines can help consumers determine if their income comfortably covers the premiums, if the assets that they want to protect are more valuable than the cost of the premiums, or if they are eligible for Medicaid and will have their long-term care needs covered by this government program.

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[135] Brenerman, David. Assistant Vice President of Government and Public Affairs, UnumProvident. Personal interview. 21 Mar. 2002; Roche, Marie. Director, Long-term Care Contracts and Legislative Services, John Hancock Financial Services, Inc. Personal interview. 21 Mar. 2002.
[136] The increase was made to two classes of policies - Form 4042-MA and Form 4043-MA - as well as to two related riders to long-term care insurance policies. March 2001 documentation from the Massachusetts DOI on the approval of a Fortis rate increase.
[137] Broghamer, Robert. Telephone interview. 22 Mar. 2002.

By providing suitability standards to consumers before they purchase long-term care insurance policies, consumers have an additional resource to help them gauge whether they are making an appropriate purchase.

Premium increases are not capped in Massachusetts. DOI must grant approval to any insurer wishing to increase premiums for a class of policies sold in the Commonwealth. There is no maximum cap for these increases. For example, rates may not increase at all over the life of the policy or rates may increase by 30 percent each year for several years. Some policyholders in other states have seen their premiums increase three-fold.[138] There is currently no guarantee to a consumer that their rates will not increase more than a certain percentage of their original premium rate. As a result, consumers could be subjected to significant rate increases over the life of their policy.

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[138] Davis, Ann. "Shaky Policy: Unexpected Rate Rises Jolt Elders Insured For Long-Term Care, Two Purveyors in Particular Implied Stable Premiums But Boosted Them Often, Signing Up the Less-Healthy." The Wall Street Journal 22 Jun. 2000.

Lack of Information for Consumers

A Consumer's Inability to Comparison Shop

Massachusetts consumers currently cannot access important information such as:

- How often did Massachusetts policyholders let their policies lapse last year?
- Which companies have the highest claims denial rate?
- How often did insurers increase premiums?[139]

Without this information, consumers cannot comparison shop and are forced to make uninformed choices about purchasing long-term care insurance policies.

When buying a car, consumers can refer to the National Highway Traffic Safety Administration's crash test report to determine which car ranks highest on safety standards.[140] When deciding which nursing home to place a loved one in, consumers can refer to the Massachusetts Department of Public Health nursing home survey.[141] While some limited information is available to consumers who want to purchase long-term care insurance, consumers do not have access to solid comparison data for different companies and policies.

Web sites that have information on long-term care insurance policies tend to provide a rather brief overview of policy features. Other web sites offer estimated quotes for long-term care insurance policies and referrals to agents who sell this product.[142]

DOI collected some data in its 1996 survey of long-term care insurance providers in the Commonwealth. DOI is expected to release the results from its follow-up survey in the summer of 2002.[143] While useful, there has been a significant time lapse between these surveys and, therefore, updated information has not been available.

Neither of these sources collects comprehensive data on individual and group policies that could empower consumers to sufficiently compare company histories and track records before purchasing a policy. Data that would be helpful to consumers for both individual and group policies include:

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[139] Beagan, Kevin. Director of Health Unit, State Rating Bureau, Massachusetts Division of Insurance. Personal interview. 26 Jan. 2002.
[140] See <http://www.nhtsa.dot.gov/NCAP/Index.html> (Visited 4 Mar. 2002).
[141] See <http://www.state.ma.us/dph/qtool/sptweb2.htm> (Visited 11 Dec. 2001).
[142] See <http://wwww.insure.com> (Visited 12 Mar. 2002); See <http://www.ltcshelton.com/consumer_home.html> (Visited 12 Mar. 2002).
[143] Beagan, Kevin. Director of Health Unit, State Rating Bureau, Massachusetts Division of Insurance. Personal interview. 26 Jan. 2002.

- a brief description of policies;
- premium rate increases;
- lapse rates of policies;
- claims denial rates;
- amount paid in claims as a percentage of total premium dollars collected; and
- sample premiums for each policy at ages 50, 65 and 75.

Premium increase and policy lapse rate information listed for each insurer is currently not available publicly to consumers. Companies are not required to report these data to the DOI. Consumers cannot compare policy lapse rates, claims denial rates or premium increases among insurers. Consumers find it difficult if not impossible to comparison-shop and are often forced to buy blind.[144]

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[144] Knox, Richard. "Proposed Coverage Changes Rapped: State Seeks To Ease Long-Term Aid Rules." The Boston Globe 3 Apr. 1999: B1.

Findings & Recommendations

Finding: Massachusetts is one of only four states that has failed to pass legislation aimed at protecting consumers who purchase long-term care insurance policies. In addition, state regulations have been relaxed. Because there is no legislation and lax regulations, Massachusetts consumers purchasing long-term care insurance policies are left without sufficient protection particularly in the following areas:

a. Massachusetts does not have any legislation or regulation imposing minimum standards on group long-term care insurance policies. In addition, DOI does not have the statutory authority to review and approve initial premium rates and rate increases by insurers offering group policies in the Commonwealth. In a 1996 DOI survey, more than half of all policies sold in Massachusetts were group policies.

b. Insurers are now selling long-term care policies to some consumers in Massachusetts that are "nursing home only" policies, even though most policyholders will never need extended nursing home care. These policies do not provide any coverage for in-home long-term care needs – care most seniors are far more likely to need.

c. Typically, consumers are forced to make permanent decisions on the features of their policy at the time of purchase. Insurers are not required to send a yearly statement reminding policyholders what coverage they have nor are they required to let them reassess their coverage options each year.

d. Policyholders lack an appropriate forum for acknowledging and officially appealing claims denials or other problems with their policies. DOI and the Attorney General's office both have a system in place to address and mediate complaints by consumers regarding their long-term care insurance policies. However, these systems fall short of providing an independent, third-party appeal process for individuals wishing to challenge a denied claim or benefit by their long-term care insurance provider.

Recommendation: Massachusetts should pass legislation creating strong standards to protect consumers in the long-term care insurance marketplace. These standards should include the following:

a. *Group policy minimum standards and disclosure*: Group policies should be required by law to meet minimum standards. DOI should have statutory authority to mandate additional standards, review initial premium rates and approve proposed premium increases for group policies sold in the Commonwealth.

b. *Multiple care settings*: Individuals should have a choice of receiving care at home or in a nursing home. All policies sold in the Commonwealth that cover nursing home care should have a home care benefit.

c. *Annual review of policy*: Policyholders should receive a yearly statement clearly outlining their coverage. Policyholders should be allowed to revisit their policies on an annual basis to make certain changes. At a minimum, the consumer should be able to:
   - change their elimination period (i.e., their "deductible");
   - modify the amount of coverage;
   - add or remove nonforfeiture coverage (a benefit that requires insurers to provide some coverage for policyholders who paid premiums for a set number of years and then let their policies lapse); and
   - add or remove inflation protection coverage.

d. *Third-party appeal process*: Policyholders should have access to an independent third-party appeal process as a way to address problems with their long-term care insurers. This process should ensure that policyholders' complaints are reviewed and addressed in a timely and fair manner, and it should allow for the overturning of unfair decisions by insurers.

Finding: Consumers can be subjected to deceptive marketing strategies when trying to purchase long-term care insurance.

a. The term "level premium" is misleading to consumers who purchase long-term care insurance policies. While information about possible rate increases is disclosed on the policy, it is not required to be disclosed in such a way that consumers are likely to understand it. As a result, individuals are often told that their policies will have "level premiums" that will not increase due to age or illness, leaving many with the impression that their premiums will never increase. However, insurance companies can and do raise premiums.

b. There are times when insurance companies make actuarial mistakes and are forced to increase premiums in order to cover claims. However, there is no regulation limiting how much the premium can be increased.

c. Consumers may receive little or inappropriate guidance in determining whether a policy is appropriate for them. DOI currently offers consumers a policy illustration, a form that outlines the coverage of a policy. This form falls short of helping consumers determine whether their income and assets make them suitable purchasers for a particular policy.

Recommendation: Massachusetts should develop protections against deceptive marketing practices in the long-term care insurance industry by instituting the following:

a. *Disclosure of possible rate increases*: All policies sold in the Commonwealth should clearly state in large, bold letters at the top of the front page of the policy in a clear, non-technical manner that rates can increase regardless of whether the insurer or agent guarantees a "level premium."

b. *Establishing guidelines for appropriate premium increases*: Insurers and consumers should have the same expectation regarding how much premiums may increase. DOI should establish a premium cap that prevents rates from increasing more than a designated percentage over the life of a policy. By establishing a premium cap, insurers have the flexibility to increase premiums up to a certain limit and consumers understand at the time of purchase the maximum amount their premium could increase.

c. *Suitability standards:* Suitability standards are guidelines issued by an insurer that help consumers determine whether a long-term care insurance policy is appropriate for them. Insurers should develop suitability guidelines for all policies sold in the Commonwealth based on a format approved by DOI.

Finding: Consumers are unable to access important information about long-term care insurers and the policies they sell. This makes comparison-shopping very difficult and forces consumers to make uneducated and uninformed choices about which company to use and which policy to buy. In addition, DOI has virtually no information about group policies sold in Massachusetts.

Recommendation: Consumers interested in purchasing long-term care insurance policies must be provided with full information on insurers and their policies in order to make informed decisions. All long-term care insurance providers should submit to DOI on a yearly basis comparative national and state-level information about policies sold in Massachusetts. This information should include at least the following:

- a brief description of policies;
- premium rate increases;
- lapse rates of policies,
- claims denial rates;
- amount paid in claims as a percentage of total premium dollars collected; and
- sample premiums for each policy at ages 50, 65 and 75.

This information should be collected on all insurers that sell long-term care insurance in Massachusetts. Companies should provide five years worth of national and state-level data, or data since inception, for every long-term care insurance policy sold in Massachusetts. This information should clearly differentiate individual policies from

group policies and be written in common language with a standard format that a novice insurance purchaser could understand.

The data should be included as an insert in DOI's *Your Options for Financing Long-Term Care: A Massachusetts Guide* that is currently provided to every consumer by insurance agents at their first meeting and should be made available on the DOI web page. In addition, the suitability standards developed by insurance companies should be on the DOI web page and provided to all consumers prior to purchasing a long-term care insurance policy. By making this information available to consumers, the market will be allowed to work as it should – consumers can pick a policy with the company they believe has the best record of service and meets their needs.

GLOSSARY

Activities of daily living: Everyday functions and activities individuals usually do without help and may include bathing, continence, dressing, eating, toileting and transferring.[145]

Benefit triggers: Term used by insurance companies to describe when the policy will begin to pay benefits.[146]

Daily benefit: The amount of insurance benefit in dollars per day that a person chooses to buy for covered expenses.[147]

Elimination period: A type of deductible. It is the length of time an individual must pay for covered services before the insurance company will begin to make payments.[148]

Guaranteed renewable: Policy feature guaranteeing the insured's right to continue a policy. The company cannot change the coverage or refuse to renew the coverage for reasons other than nonpayment of premiums (including health conditions and/or marital or employment status); however, the company can revise the rate subject to the approval of the Commission of Insurance.[149]

Inflation protection: A policy option that provides for increases in benefit levels to help pay for expected increases in the costs of long-term care services. Applicants usually have the choice of automatic increases or periodic special offers to increase plan benefits.[150]

Lapse: Termination of a policy when a renewal premium is not paid.[151]

Long-term care: A variety of services aimed at helping people with chronic conditions compensate for limitations in their ability to function independently. It is for people with a prolonged physical illness, disability or cognitive disorder (such as Alzheimer's disease).[152]

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[145] Commonwealth of Massachusetts. Division of Insurance. Your Options for Financing Long-Term Care: A Massachusetts Guide. Jan. 2002.
[146] Ibid.
[147] Ibid.
[148] Ibid.
[149] Ibid.
[150] Ibid.
[151] Ibid.
[152] National Association of Insurance Commissioners. A Shopper's Guide to Long-Term Care Insurance. Kansas City, MO: 2001.

Nonforfeiture benefits: A policy feature that provides a specified paid-up benefit or returns at least part of the premiums to a consumer who cancels his policy or lets it lapse.[153]

Suitability standards: Guidelines issued by an insurer that help consumers determine whether a long-term care insurance policy is appropriate for them.

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[153] Commonwealth of Massachusetts. Division of Insurance. Your Options for Financing Long-Term Care: A Massachusetts Guide. Jan. 2002.